



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

Mr. Richard J. Ybarra
Open Records Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0797

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39624.

The Crime Victims' Compensation Division of the Office of the Attorney General requested an open records decision as to whether information from a particular crime victim's file is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body seeking a decision is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile on April 9, 1996, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the information at issue was presumed public.

You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling

interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

The fact that information is confidential by law is sufficiently compelling to overcome the presumption of openness. Open Records Decision No. 150 (1977). Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are *created or maintained by a physician* are confidential and privileged and may not be disclosed except as provided in this section. [Emphasis added.]

Some of the documents submitted to this office are medical records that were created or are being maintained by the crime victim's physician. These documents are confidential and may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* § 5.08(c), (j). However, it appears that several documents containing medical information were created by the crime victim or the Crime Victims' Compensation Division. These documents are not within the scope of the MPA and are therefore not excepted from disclosure under section 552.101 of the Government Code.

You contend that some of the requested information is protected by common-law privacy. Common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person *and* the public has no legitimate interest in it. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 611 (1992), this office discussed the public nature of information found in police reports concerning domestic violence. Open Records Decision No. 611 concluded that not all information regarding investigations of family violence is protected by common-law privacy:

We cannot categorically maintain that information regarding violence between family members is highly intimate and embarrassing and of no public interest. An assault by one family member on another is a crime, not a family matter normally considered private. On the other hand, we can envision some circumstances under which the details of an assault and, possibly, the identity of the victim would be excepted from disclosure by common-law privacy. For example, if one family member *sexually assaults* another, at least some of the information in the police department's file would be excepted from required public disclosure. . . . The determination of whether the information in the file can be excepted from disclosure must be made on a case-by-case basis. [Emphasis added; citations deleted.]

We have reviewed the documents at issue and determined that none of the information that you claim is protected by common-law privacy is in fact the kind of information that common-law privacy protects.

However, this office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). The requested documents contain notations regarding the amount of the crime victim's salary. The crime victim is not a public employee, and in this case, there is no legitimate public interest in the amount of her salary. Accordingly, references to the amount of the crime victim's salary are excepted from disclosure under section 552.101 of the Government Code as information protected by common-law privacy.

Finally, we note that the crime victim's social security number appears on several of the requested documents. Amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), incorporated into the Open Records Act by section 552.101, make confidential social security numbers obtained or maintained by authorized persons pursuant to any provision of law enacted *on or after October 1, 1990*. Open Records Decision No. 622 (1994) at 2-3. Thus, if the crime victim's social security number was obtained or maintained pursuant to any such provision of law, the number is confidential and may not be publicly disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39624

Enclosures: Submitted documents

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(w/o enclosures)